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August 12, 2008

Dr. Roy E. Crabtree
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Subject: EPA NEPA Comments on NOAA DEIS for "Amendment 29 to the Reef Fish Fishery Management Plan"; Commercial Grouper and Tilefish; Gulf of Mexico Fishery Management Council; Gulf of Mexico; CEQ No. 20080256; ERP No. NOA-E91024-00

Dear Dr. Crabtree:

Consistent with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the National Oceanic and Atmospheric Administration's (NOAA) Draft Environmental Impact Statement (DEIS) for Amendment 29 to the Reef Fish Fishery Management Plan (FMP). The DEIS was prepared for NOAA by the Gulf of Mexico Fishery Management Council (Council). This amendment concerns the overcapitalized commercial grouper complex (multi-species) fishery in the Gulf of Mexico (GOM), which has resulted in derby-style fishing to fill the quota. Amendment 29 provides numerous alternatives to manage the overcapacity of the fishery based on an Individual Fishing Quota (IFQ) program (preferred in the DEIS) or through permit endorsements.

Overall, EPA supports Amendment 29 to restore the grouper complex fishery. Our main focus for this and most fishery recovery programs is a rapid restoration of the resource. However, at the same time, we are also aware that fishers leaving the fishery under duress or having to reduce their fishing infrastructure (vessels, gear, etc.) can be expected to be a hardship on most commercial fishers (unless such investments can be re-targeted to other fisheries that support larger stocks and optimum yield harvests). This would particularly be true if hardship cases included Environmental Justice (EJ) commercial fishers (i.e., low-income and/or minority fishers) that may be substantively affected by the new fishery management regulations.

For the review of this DEIS, EPA has provided comments and suggestions on the proposed fishery management alternatives, EJ considerations, and the NEPA process. Our comments should be considered in the development of the Final EIS (FEIS).

Management Alternatives

Numerous alternatives and options were presented for three actions (A,B,C) concerning 1) effort, permits and species management (Action A), 2) IFQ design (Action B) and 3) permit endorsements (Action C). It is clear from the DEIS that NOAA/NMFS, the Council and the Advisory Panel (AP) have expended a considerable amount of time and effort on developing these complex alternatives and the selection of a preferred alternative and option for most actions. Because of this complexity and expended effort, EPA will principally defer to NOAA/NMFS and the Council (as well as the AP) and offers only the following comments on management alternatives.

* **Action A1 (Effort Management Approach)** – Implementation of an IFQ program (Preferred Alternative 2) appears to be a reasonable management approach to reduce the size of the fishery to restore the stock. We will defer to NOAA/NMFS and the Council that using IFQ as the best management choice for this Amendment/EIS to recover the grouper complex. In addition, we note (pg. 31) that an IFQ program's elimination of derby-style fishing would likely improve safety (quotas are individual so that fishing is more at the fishers' convenience rather than competitive), reduce the loss of gear (and its associated ghost fishing), reduce the number of regulatory discards, and minimize physical gear-effects on fishing ground habitat. EPA supports such effects of an IFQ program.

* **Action A2 (Permit Stacking)** – We concur with the single-owner consolidation or “stacking” of multiple permits into one permit. We presume the intent of Action A2 is to reduce the number of vessels and fishers (overall fishing effort) even though the benefits from summing the catch histories of the multiple permits would be retained. However, we suggest that the DEIS clarify that such consolidation would indeed reduce the number of permitted vessels in the fishery (or would a single owner of a now single permit still be allowed to fish with the same number of vessels associated with the multiple permits?). That is, the FEIS should further discuss the expected positive consequences to this fishery management action through the implementation of Preferred Alternative 2.

* **Action A3 (Speckled Hind and Warsaw Grouper Classification)** – We can support Preferred Alternative 3 for both species of grouper since this action may reduce (pg. 38) the number of regulatory discards (which may ultimately result in mortalities) if the deep-water fishery closes before the shallow-water fishery, as has historically been the case.

* **Action B1 (Substantial Participants)** – We note that the no action is preferred in the DEIS (Preferred Alternative 1). This alternative would not define substantial participants, thus not placing restrictions on the number of individuals eligible for transfer of IFQ shares, or annual allocation. Since it is our understanding that the intent of Amendment 29 is to reduce capacity, selection of Alternative 1 would not seem to be appropriate. EPA would instead prefer some limitation of substantial participants, and will defer to the AP's preference for Alternative 2 as to the extent of those restrictions. Alternative 2 would seem to reasonably limit the substantial participants

to the current 1,080 valid or renewable permits owned by commercial reef fishers. However, once the fishery is restored, it could be reopened to all interested commercial fishers who would qualify for permits regardless of their history or current permit status within the fishery. If the Council's Preferred Alternative 1 is ultimately selected in the FEIS, differences between the Council and AP approaches should be further discussed.

Additionally, EPA does not prefer Alternative 7, which references restaurant owners and fish house employees as providing "necessary services". While they do provide important services, we do not believe them to be essential during times when the fishery is declining.

* **Action B2 (Eligibility for Initial IFQ Shares)** – Consistent with our preference for Alternative 2 for Action B1, we agree with the DEIS selection of Preferred Alternative 2 for Action B2. This alternative would limit eligibility to "at most the 1,080 valid or renewable permits on record as of April 9, 2008." (While we agree with this statement in principal, the FEIS should discuss why not all – as opposed to "at most" – of the 1,080 permit holders would be guaranteed eligible).

* **Action B3 (Initial Apportionment of IFQ Shares)** – We agree that an apportionment system should be in place and therefore do not prefer the no action. We concur with the DEIS selection of Preferred Alternative 3 since it will not only distribute shares proportionate to recent average annual landings, but also will allow the elimination of one year for contingencies (e.g., permit holder was not able to fish for various reasons). This alternative therefore appears to be the fairest. However, given the intent of Amendment 29 to reduce the overcapacity of the fishery, Alternative 2 (which does not allow for contingencies) would decrease the size of the fishery more rapidly than Preferred Alternative 3, and therefore might be further considered if societal issues are not deemed significant.

* **Action B4 (IFQ Share Definitions)** – Preferred Alternative 4 was characterized (pg. x) as "...the best alternative to prevent overfishing while achieving optimum yield." EPA therefore defers to the NOAA/NMFS and the Council regarding this alternative's identification as the preferred alternative for Action B4.

* **Action B5 (Catch-Quota Balancing: Multiuse Allocation and Trip Allowance)** – It is unclear how multiuse IFQ shares would benefit the fishery since allocations can be used for more than one species. To us, species-specific allocations based on current fishery data would seem to be more beneficial as a fishery management tool. As such, the no action (Alternative 1) might be considered in selecting a preferred alternative for Action B5. We will defer to NOAA/NMFS and the Council, but suggest that if a multiuse allocation is selected, its fishery value be further discussed in the FEIS.

* **Action B6 (Transfer Eligibility Requirements)** – Consistent with our preference for Alternative 2 for B1 and B2, we prefer Alternative 2 for B6. This alternative would restrict the transfer eligibility to commercial reef fishers holding a valid or renewable permit, which should limit the size of the fishery and thereby support the purpose of

Amendment 29. If Preferred Alternative 3 is continued to be identified in the FEIS as the preferred alternative, the rationale for rejecting Alternative 2 should be further discussed for Action B6 (as well as B1 and B2).

* **Action B7 (Caps on IFQ Share Ownership)** – We offer no substantive comments for B7 but believe the Council’s and AP’s preference for Alternative 3 is reasonable. This approach would set share caps equal to the largest shares at the time of the initial apportionment, would not require grandfathering anyone, and is consistent with the red snapper IFQ program (for clarity, the FEIS should discuss why the red snapper IFQ should be followed, i.e., how has the red snapper IFQ program been successful to date?).

* **Action B8 (Caps on IFQ Allocation Ownership)** – Consistent with Preferred Alternative 3 for B7, the Council’s and AP’s preference for Preferred Alternative 2 is reasonable. Although this approach accounts for any grandfathering in B7, we understand that Preferred Alternative 3 for B7 (above) would not require grandfathering. As such that we assume there should also be none for B8 if Preferred Alternative 3 is selected. We note that while grandfathering may be equitable, it often does not promote the desired improvements being considered (in this case, reducing the size of the fishery to restore it).

* **Action B9 (Adjustments in Annual Allocations of Commercial TACs)** – Preferred Alternative 2, which uses a proportional approach to allocation adjustments, appears equitable.

* **Action B10 (Establishment and Structure of an Appeals Process)** – EPA offers no comments on an appeals process from an administrative perspective; however, we do agree with withholding 3% of the total available IFQ shares as an allowance for appeals. As such, any successful appeals would not result in the exceedance of the initial IFQ shares (at least within the 3% margin retained), which could be counterproductive to the recovery of the resource.

We also note that “hardship arguments will not be considered” under Preferred Alternative 2 and Alternative 3 (pg. 89). While we concur from a strict resource recovery perspective, what offsets could be offered or suggested for fishers with legitimate hardship cases?

* **Action B11 (Use it or Lose it Policy for IFQ Shares)** – In order to reduce the size of the fishery, we suggest implementation of a reasonable threshold landings requirement (Alts. 2 or 3) in order to retain the IFQ shares. On the other hand, if there is no fishing associated with certain shares, there would be no landings or impact on the recovery of the fishery (nevertheless, Alternatives 2 or 3 would make no fishing for those shares permanent). As such, selection of the no action as the preferred alternative might be reconsidered in the FEIS.

* **Action B12 (Cost Recovery Plan)** – EPA considers cost recovery for monitoring, data collection, enforcement, etc. associated with the IFQ program an internal NOAA/NMFS

issue and has no substantive comments. However, considering the existing economic impacts on affected fishers associated with the IFQ program (required less landings and underutilization of infrastructure as management tools to recover the fishery), also requiring fees from fishers (e.g., deducted from ex-vessel values of landings) for the cost recovery program would appear to be another (and avoidable) hardship for the industry. Preferred Alternative 2 would require such fees while the no action would not.

* **Action B13 (Guaranteed Loan Program)** – Regarding the use of a guaranteed loan program to help eligible fishers to buy additional IFQ shares, we offer two scenarios. Inasmuch as loans may not help to reduce the size of the fishery (i.e., they would help small fishers buy shares), it would be counterproductive to the purpose of Amendment 29. Inasmuch as such loans may better utilize existing infrastructure (e.g., vessels) and eliminate others, it would be supportive to Amendment 29. We note that the no action (no guaranteed loans) was selected in the DEIS.

* **Action B14 (Approved Landing Sites)** – In order to participate in the IFQ program, we fully agree with only using landing sites that are selected by the fishers but that require approval by NOAA/NMFS (Preferred Alternative 2, Option a).

* **Action C1, C2, C3 (Permit Endorsements)** – We offer no comments on the endorsement program in lieu of the IFQ program since the IFQ appears to be a reasonable approach and is preferred by the Council (the no action was the identified preference for Actions C1, C2 and C3 in the DEIS). As indicated previously, we suggest that the success and any problems associated with existing IFQ programs (e.g., red snapper IFQ) be discussed in the FEIS, and also related to the proposed grouper complex IFQ program.

EJ Considerations

Implementation of fishery management measures – particularly more restrictive measures that emphasize resource recovery – can result in socio-economic impacts to fishers. In the case of Amendment 29, losing IFQ shares or having to leave the fishery under duress or having to reduce your fishing infrastructure (vessels and gear), can be expected to be a hardship to most commercial fishers. This should be analyzed under NEPA.

EPA much appreciates the EJ information provided in the DEIS in an effort to determine if any EJ fishers would be affected by Amendment 29. We realize that gathering and documenting information on all the fishing communities in the Gulf of Mexico (GOM) associated with the commercial fishing of grouper would be an overwhelming task. We agree with the approach taken in the DEIS to document representative communities. We further concur with the use of “secondary data” (landings, federal permits and U.S. Census data) as a “starting point” (pg. 131) since Census data are inconclusive in this case (not all people in a Census geographic group are fishers) and since more direct information would require considerable time and funding to develop. We therefore can appreciate the DEIS discussion on *Social Impact Assessment Data Needs* (pg. xiv) that identifies the need for more community data and references CEQ Guidance 1502.22, which addresses EIS preparation when certain data are lacking (pg. xv).

We believe that Section 1502.22 should rarely be invoked. While hard data may not be readily available, a reasonable “good faith” effort of “due diligence” is usually possible to obtain usable data that may or may not be refined later within the NEPA process for a given EIS. We are therefore pleased to note that the present DEIS does contain some EJ information for three surrogate GOM grouper fishery communities (Madeira Beach, FL; Panama City, FL; and Port Isabel, TX). However, the FEIS would be much improved if the following modifications were included:

* *Selection Rationale* – The rationale for selecting the three surrogate communities as “representative” should be disclosed. For example, even though Madeira Beach was characterized as the “Grouper Capital of the World” (pg. 133), this by itself may or may not imply that it is a representative community in terms of GOM commercial grouper fishing or the demographics of the typical grouper fishers. That is, representative numbers of EJ fishers in the grouper complex fishery may not live in Madeira Beach but could live in unsurveyed communities. In addition, the FEIS should estimate how many communities along the GOM coastline include a substantive number of commercial grouper fishers. That is, are these communities part of 10, 50, 100, or 1,000 GOM fishing communities involved in the grouper complex fishery?

* *Data Sources* – The source(s) of data compiled for the three communities (other than the cited U.S. Census data) should be disclosed for each community (e.g., table on page 135 for Madeira Beach). We assume the sources are the secondary data discussed above. It is unclear if outreach surveys were also included.

* *Surveys* – Given the uncertainty of secondary data and the great task of gathering data for a complete analysis, perhaps the best approach is to directly survey given communities that are representative of the fishery. Such outreach data would be meaningful if the survey was comprehensive and representative.

* *Regulatory Impact Review* – Based on secondary and/or survey data, this section of the DEIS (pg. 242) should be improved in the FEIS by incorporating any EJ effects on fishers of the grouper complex fishery as they relate to Amendment 29. The DEIS version does not appear to include such information.

* *Mitigation* – Similarly, DEIS Section 5.7 on *Mitigation, Monitoring, and Enforcement Measures* (pg. 238) does not incorporate EJ information. We acknowledge that once any EJ impacts are determined, their mitigation is equally difficult to assess in terms of possible offsets to affected communities. However, we request that the FEIS attempt to further address societal impacts and solutions. It is our understanding that both environmental and socio-economic impacts are to be considered under the Magnuson-Stevens Act (MSA). As such, what relief might MSA offer to commercial fishers that leave the fishery under duress or sell their oversized/underutilized vessels, gear or other infrastructure as the size of the fishery is reduced by the IFQ program. In particular, hardship cases for any affected EJ fishers should be discussed with suggestions for potential federal or non-federal solutions provided to help offset impacts. Potential offset options might include any provisions within MSA or NOAA/NMFS

policy as well as opportunities for re-targeting to new fisheries that are not overfished, success in selling infrastructure at a fair price, availability of other employment or re-training for new employment.

NEPA Process

We note that the “Dear Reviewer” letter accompanying our copies of the DEIS indicates that public comments are due August 11, 2008. However, based on the date of the EPA *Federal Register* notice announcing the availability of this EIS (which in turn is based on EPA’s receipt of copies of the EIS for filing), public comments are actually not due until August 18, 2008. We therefore ask that all comments received by then (we recommend even those only postmarked by then) will be accepted as official comments by NOAA/NMFS.

Summary

Because of the complexity of the fishery management alternatives provided for Amendment 29 as well as the extensive planning efforts already expended by NOAA/NMFS and the Council (and the AP) to develop these alternatives, EPA will principally defer to their fishery expertise. In general, however, EPA supports Amendment 29 as a means to restore the grouper complex fishery. Instances where we did not favor the preferred alternative identified in the DEIS were based on our preference to promote a more rapid recovery of the resource. That is, when given a choice, management restrictions were preferred over the no action.

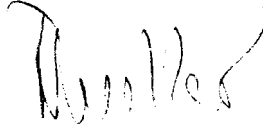
At the same time, however, we are aware that implementing a more restrictive management approach can result in greater socio-economic impacts to fishers. In this case, losing IFQ shares, leaving the fishery under duress, or having to reduce your fishing infrastructure (vessels and gear) can be expected to be a hardship to most commercial fishers. To supplement the socio-economic information provided in the DEIS, we request that the FEIS provide additional discussion on societal issues related to each alternative ultimately preferred in the FEIS, with special emphasis on any hardships to EJ fishers. Such information might include outreach surveys of representative GOM grouper fishing communities to supplement the secondary information used. Possible federal and non-federal mitigative offsets for any determined EJ impacts should also be suggested.

EPA DEIS Rating

We rate this DEIS as “LO” (Lack of Objections). Nevertheless, we request that NOAA and the Council directly respond to our comments and suggestions in a dedicated section of the FEIS to facilitate the public review of the FEIS.

We appreciate the opportunity to review the DEIS. Should you have questions regarding these comments, feel free to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'H. Mueller', with a stylized flourish at the end.

Heinz J. Mueller, Chief
NEPA Program Office
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